IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS SAN ANTONIO DIVISION

MELODY JOY CANTU and	§
DR. RODRIGO CANTU,	§
Plaintiffs	§
	\$
	S CASE NO.: 5:20-CV-00746-JKP (HJB)
	\$
V.	\$
	\$
DR. SANDRA GUERRA and	\$
DIGITAL FORENSICS	\$
CORPORATION, LLC	\$
Defendants	\$

<u>PLAINTIFFS' MOTION FOR LEAVE TO FILE DEFENDANTS' SUR-REPLY TO PLAINTIFFS' REPLY TO DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL MOTION FOR SUMMARY JUDGMENT AND REQUEST FOR SANCTIONS AGAINST PLAINTIFFS</u>

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Pursuant to Local Rule CV-7(E)(1), Defendants, DR. SANDRA GUERRA ("Dr. Guerra") and DIGITAL FORENSICS CORPORATION, LLC ("DFC" and, together with Dr. Guerra, "Defendants"), hereby request leave to file Defendants' Sur-Reply to Plaintiffs' Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Leave to File Supplemental Motion for Summary Judgment and Request for Sanctions Against Plaintiffs [Doc. 122] and, in support thereof, respectfully shows unto the Court as follows:

ARGUMENT AND AUTHORITIES

1. On July 17, 2023, Plaintiffs filed Plaintiffs' Motion for Leave to File Supplemental Motion for Summary Judgment [Doc. 120]. However, Plaintiffs failed to address or identify a single "good cause" factor for consideration under Rule 16(b) in Plaintiffs' Motion for Leave.

- 2. Defendants timely filed their Response in Opposition to Plaintiffs' Motion for Leave to File Supplemental Motion for Summary Judgment and Request for Sanctions Against Plaintiffs [Doc. 121] on July 24, 2023. Plaintiffs subsequently filed Plaintiffs' Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Leave to File Supplemental Motion for Summary Judgment and Request for Sanctions Against Plaintiffs [Doc. 122] (the "Reply") on July 31, 2023.
- 3. Plaintiffs' Reply contains new legal and factual arguments not previously asserted in Plaintiffs' Motion for Leave. Specifically, Plaintiffs' Reply now includes a Rule 16(b) analysis and Plaintiffs' new factual and legal contentions regarding each of the four factors that must be considered in determining whether Plaintiffs have satisfied their burden of showing good cause to allow leave to file Plaintiffs' Proposed Supplemental Motion for Summary Judgment.
- 4. Therefore, Defendants respectfully requests leave to file Defendants' Sur-Reply to address Plaintiffs' new arguments and legal analysis contained in Plaintiffs' Reply. In accordance with Local Rule CV-7(b), a copy of the Defendants' proposed Sur-Reply to Plaintiffs' Reply to Defendants' Response in Opposition to Plaintiffs' Motion for Leave to File Supplemental Motion for Summary Judgment and Request for Sanctions Against Plaintiffs is included with this Motion for Leave.

Dated: August 7, 2023. Respectfully submitted,

DAVIS, CEDILLO & MENDOZA, INC.

McCombs Plaza, Suite 500 755 E. Mulberry Avenue San Antonio, Texas 78212 Telephone No.: (210) 822-6666 Telecopier No.: (210) 822-1151

By: /s/Ricardo G. Cedillo
RICARDO G. CEDILLO
Texas State Bar No. 04043600
rcedillo@lawdcm.com
BRANDY C. PEERY
Texas State Bar No. 24057666
bpeery@lawdcm.com

ATTORNEYS FOR DEFENDANT, DR. SANDRA GUERRA

-AND-

APPLE & FINK, L.L.P.

735 Plaza Blvd., Suite 200 Coppell, Texas 75019 Telephone No.: (972) 315-1900 Telecopier No.: (972) 315-1955

By: <u>/s/J. David Apple</u>
J. DAVID APPLE
Texas State Bar No. 01278850
jdapple@applefinklaw.com

ATTORNEYS FOR DEFENDANT, DIGITAL FORENSICS CORPORTION, LLC

CERTIFICATE OF SERVICE

I certify that on the 7^{th} day of August 2023 a true and correct copy of the foregoing was electronically via the CM/ECF System to all counsel of record.

<u>/s/Ricardo G. Cedillo</u> RICARDO G. CEDILLO